NOTES OF CASES.

Damages—For Mental Suffering Alone.—Plaintiff delivered to defendant company for transportation from Asheville, N. C., to Hickory Grove, S. C., a casket and grave-clothes intended for the burial of the wife of plaintiff. Through the negligence of defendant's agent, the casket was misrouted, and arrived too late for burial. Plaintiff accepted full payment for the value of the articles shipped, and brought this action claiming damages solely on account of the mental anguish occasioned him by the delay. Held, that no recovery should be allowed; mere mental pain and anxiety being too vague for legal redress where no injury is done to person, property, health or reputation. Southern Express Co. *v.* Byers, 36 Sup. Ct. 410.

This decision of the Supreme Court follows the view taken by the lower Federal courts in a long list of cases cited in the opinion. Thus the doctrine announced by the Supreme Court of Texas in 1881 in the case of So Relle *v.* Western Union Tel. Co., 55 Tex. 308, is definitely rejected by the United States Courts. The question of whether recovery may be had for mental suffering alone has usually arisen in cases against telegraph companies on account of delayed or lost death-messages. The same reasoning which allows recovery in those cases would seem equally applicable, however, to a common carrier of goods who accepts the goods with notice of their character, so that the knowledge that mental suffering may follow from their delay may be imputed to it. For a time the doctrine of the Texas case gained adherents rapidly, and seven states are now lined up on that side of the question. As against this number, however, fifteen states, and now the Supreme Court of the United States, have taken the opposite view. A recent case which reviews many of the cases on the question is that of Western U. Tel. Co. *v.* Choteau, 28 Okla. 664, 115 Pac. 879, 49 L. R. A. (N. S.) 206, cited in the opinion in the principal case.

Employers' Liability Act—Casual Negligence.—In the case of Great Northern R. R. *v.* Wiles, 36 Sup. Ct. R., 406, it was held that there was no room for the application of the rule of comparative negligence established by the Employers' Liability Act of April 22, 1908 (sec. 8657), where the rear brakeman of a parted freight train, disregarding his duty to protect the rear of his train by going back a short distance and giving the warning signals which the carrier's rules required, remained in the caboose and was killed there when a passenger train, which he knew was closely following, ran into the standing train, since his was the casual negligence, even if negligence could be imputed to the carrier from the pulling out of the drawbar breaking the freight train in two, there being no claim that the passenger train was negligently run. The court said in part:

"There is no justification for a comparison of negligences or the apportioning of their effect. The pulling out of the drawbar produced a condition which demanded an instant performance of duty by Wiles—a duty not only to himself, but to others. The rules of the company were devised for such condition and provided for its emergency. Wiles knew them, and he was prompted to the performance of the duty they enjoined (the circumstances would seem to have needed no prompting) by signals from the engineer when the train stopped. He disregarded both. His fate gives pause to blame, but we cannot help pointing out that the tragedy of the collision might have been appalling. He brought death to himself and to the conductor of his train. His neglect might have extended the catastrophe to the destruction of passengers in the colliding train. How imperative his duty was is manifest. To excuse its neglect in any way would cast immeasurable liability upon the railroads, and, what is of greater concern, remove security from the lives of those who travel upon them, and therefore, all who are concerned with their operation, however high or low in function, should have a full and an anxious sense of responsibility.

"In the recent case there was nothing to extenuate Wiles negligence; there was nothing to confuse his judgment or cause hesitation. His duty was as clear as its performance was easy. He knew the danger of the situation and that it was imminent; to avert it he had only to descend from his train, run back a short distance, and give the signals that the rules directed."

Employers' Liability Act—Independent Contractor.—In the case of Chicago, Rock Island & Pacific R. R. *v.* Bond, 36 Sup. Ct. R., 403, it appeared that a contract had been made between a railway company and an original contractor by which he was to handle at the company's coal chutes the coal required for its engineer, furnishing the necessary labor for that purpose, to break the coal in suitable sizes, to unload wood from car to storage piles, load cinders on cars and unload sand. The manner of the work to be performed by him or his employees was under his control and he was made responsible for the faithful performance of the agreement, incurring the penalty of instant termination of the contract for nonperformance. The contract also provided for payment on the basis of tons, cars or yards, and the "contractor" expressly assumed all liability for injuries to himself or to his property, or to his employees or third persons, and there was an explicit provision that the carrier "reserves and holds no control over him in the doing of such work other than as to the results to be accomplished." It was held under such arrangement that no relation of master and servant was created or could be inferred on the part of the defendant railway